

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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<b>PATRICK TUNG,</b>	:	
	:	
Plaintiff,	:	<b>ORDER ADOPTING REPORT</b>
	:	<b>AND RECOMMENDATION</b>
– against –	:	
	:	21-CV-7137 (AMD) (RML)
<b>WAN HAO RESTAURANT, INC., CONNIE</b>	:	
<b>YING ZHANG, and HOWARD LEE,</b>	:	
	:	
Defendants.	:	
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<b>ANN M. DONNELLY,</b> United States District Judge:		

On December 28, 2021, the plaintiff brought this case against the defendants, his former employers, alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and the New York Labor Law §§ 190, 650 *et seq.* (ECF No. 1.)<sup>1</sup>

On June 14, 2023, the case was referred to mediation; however, on January 15, 2024, the plaintiff’s counsel informed the court that the parties were not able to schedule the mediation because he had “lost contact” with the plaintiff. (ECF No. 38.) On January 30, 2024, the plaintiff’s counsel moved to withdraw. (ECF No. 39.) On February 12, 2024, Magistrate Judge Levy granted the plaintiff’s motion and directed the plaintiff to inform the Court by April 1, 2024 “whether he wished to continue with the litigation” and, if so, “to obtain new counsel or be prepared to proceed *pro se*” at the Court’s April 3, 2024 telephone conference. (*ECF Order dated Feb. 12, 2024.*) Judge Levy warned the plaintiff that failure to appear at the conference “may result in a recommendation that this case be dismissed for failure to prosecute” and

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<sup>1</sup> Another plaintiff, Vanessa Li, voluntarily dismissed her claims on August 10, 2022. (ECF No. 21.)

directed the plaintiff's counsel to serve the February 12, 2024 docket order "on [the] plaintiff and to file an affidavit of service." (*Id.*)

The plaintiff did not appear at the April 3, 2024 conference, but the plaintiff's now-former counsel informed the Court that he had not served its February 12, 2024 order on the plaintiff until April 5, 2024. (ECF No. 42.) Judge Levy issued an order giving the plaintiff another 30 days to advise the Court whether he planned to retain new counsel or proceed *pro se*. (ECF Order dated Apr. 11, 2024.)

The plaintiff has not responded to this order or contacted the Court. On June 10, 2024, Judge Levy recommended in a report and recommendation that the case be dismissed for failure to prosecute. (ECF No. 43.) No objections have been filed to the report and recommendation, and the time for doing so has passed.

A district court reviewing a report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept a report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *VOX Amplification Ltd. v. Meussdorffer*, 50 F. Supp. 3d 355, 369 (E.D.N.Y. 2014).

I have carefully reviewed Judge Levy's well-reasoned report and recommendation for clear error and find none. Accordingly, I adopt the report and recommendation in its entirety. The case is dismissed without prejudice for lack of prosecution.

**SO ORDERED.**

s/Ann M. Donnelly

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ANN M. DONNELLY  
United States District Judge

Dated: Brooklyn, New York  
June 26, 2024